Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JANET LAMONTAGNE,
Petitioner,

v.

ST. LOUIS DEVELOPMENT CORPORATION
AND THE CITY OF ST. LOUIS, MISSOURI,
Respondents.

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI OF RESPONDENT THE CITY OF ST. LOUIS

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BRIEF IN OPPOSITION TO WRIT OF CERTIORI OF RESPONDENT CITY OF ST. LOUIS

Respondent The City of St. Louis respectfully requests that this Court deny the petition for writ of certiori seeking review of the Eighth Circuit's decision in this case. That decision is reported at 172 F.3d 555.

STATEMENT OF THE CASE

Petitioner Janet Lamontagne filed the action on January 6, 1998 seeking damages for an alleged violation of her right to political speech and assembly by Respondents The City of St. Louis ("City") and the St. Louis Development Corporation ("SLDC). The SLDC had terminated Lamontagne's employment pursuant to an SLDC rule that no employee could seek or accept an office in any political party, because she declined to resign her position as Democratic Committeewoman for the 14th ward in St. Louis, Missouri.

Prior to July 27, 1988, Lamontagne had been an employee of the City of St. Louis working in the Business Assistance Center. Also, prior to that time, she had held her committeewoman's position. The SLDC was incorporated on July 27, 1988. After that time, Lamontagne's salary was paid through the SLDC. The City asserted in its Motion for Judgment on the Pleadings that Lamontagne was not an employee of the City in that the City exercised no control over Lamontagne, or the SLDC.

After Lamontagne became an employee of the SLDC and before January 1, 1997, the SLDC adopted a rule that provided no SLDC employee could seek or accept *office* in any *political party*. The City previously had, and continues to have, such a rule. Additionally, the SLDC's Executive Director and three (3) additional employees designated by him could engage in *political campaigns*.

On or about October 16, 1997, the SLDC advised Lamontagne that she would be terminated if she did not resign her position as 14th Ward Democratic Committeewoman. She refused to resign and was terminated.

This case was originally assigned to the Honorable George F. Gunn, Jr. in the District Court. Answers were filed by The SLDC and the City. Motions for Judgment on the Pleadings were filed by both Respondents on March 30, 1998. The Honorable Judge Jean C. Hamilton sustained Respondents' Motion for Judgment on the Pleadings and dismissed Petitioner's Complaint on August 5, 1998. On August 13, 1998, Petitioner appealed to the United States Court of Appeals for the Eighth Circuit from the final judgment entered by the United States District Court.

Oral arguments were heard by the United States Court of Appeals on February 12, 1999 and on March 30, 1999, the Panel entered its order affirming the decision of the District Court. On the 12th day of April, 1999, Lamontagne filed a Petition for Rehearing En Banc. On April 29, 1999, the United States Court of Appeals entered an Order denying Petitions for Rehearing and for Rehearing En Banc.

REASONS FOR DENYING THE PETITION

I. The petition should be denied because a long line of cases, including those relied upon by the District Court and the Federal Appeals Court have dealt with the identical facts and issues presented in the instant case and hold that governmental entities may indeed adopt rules precluding their employees from holding office in a political party.

The District Court and the Appeals Court relied on five major decisions which presented identical facts and issues to those in the instant case. In each of these cases, the restriction on political

activity of the government employee was upheld. It is not necessary to revisit this issue.

In *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), a person employed as a roller in a U.S. mint acted outside of working hours as ward committeeman of a political party. His employer, the United States government, believed this violated § 9(a) of the Hatch Act, 18 U.S.C. Supp. V, §61h – which prohibited taking an "active part in political management or in political campaigns" *Mitchell*, 94. The Court held that this could be made the basis for disciplinary action without violating the Constitution. The Court in *Mitchell* considered many of the policy considerations behind the restriction: avoiding political favoritism, improving the efficiency of government, avoiding a tendency toward a one party system, avoiding the creation of political machines. Because the facts in *Mitchell* are so similar to the facts in this case, and because the Court in *Mitchell* considered so many of the governmental interests which could be behind the creation of a rule such as the restriction on political activity by the SLDC – and decided that such restrictions on political activity were constitutional – it is impossible to see how Petitioner's claim could state a cause of action upon which relief could be granted.

In *Broadrick v. Oklahoma*, 413 U.S. 601, (1973), the Supreme Court extended the rule handed down in *Mitchell*. Government restrictions on the political activity of employees extend to state government as well as to the federal government. The Court upheld a section of the Oklahoma state merit system regulations which provided in part that no classified service employee shall belong to "any national, state, or local committee of a political party." *Broadrick*, 607. Again, the Court considered legislative policy considerations behind the rules limiting political activity in a case with striking factual similarity to the one at bar, and concluded that such a restriction was not unconstitutional.

In *CSC v. Letter Carriers*, 413 U.S. 548 (1973), the Court reaffirmed "the *Mitchell* holding that Congress had, and has, the power to prevent . . . holding a party office, working at the polls, and acting as party paymaster for other party workers." *CSC*, 557. The provisions of the Hatch Act, Supra, reviewed in *Mitchell* were again reviewed and held to be constitutional.

In *Otten v. Schicker*, 655 F.2d 142 (8th Cir. 1987), the Court upheld a St. Louis Police Department regulation that prohibited employees from running for elective office, and in so doing, considered the valid and important state interests behind the rule - - attracting qualified persons through guaranteeing job security free from the political arena, and ensuring the impartial execution of the laws. *Otten*, 143 - 144.

In *Clements v. Fashing*, 457 U.S. 957 (1982), the Court considered the government interests behind a Texas Constitutional provision which provided that government officials already holding office could not run for a term in the legislature until after their term in office had expired. This rule was challenged on first amendment and equal protection grounds. The challenge failed. It is important to note that the equal protection challenge in *Clements* did not give rise to "heightened scrutiny" and ultimately failed.

Because these five cases confront squarely the same facts and issues as presented in the instant case, and uphold restrictions identical to that which the SLDC placed upon Petitioner, it follows that the District Court was correct in sustaining Respondents' Motion for Judgment on the Pleadings. As a matter of law, Petitioners Complaint did not state a cause of action upon which relief could be granted, and the decision of the Eighth Circuit Court of Appeals should be affirmed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiori should be denied.

RESPECTFULLY SUBMITTED,

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